

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 96-0569

Penalty

For The Years 1992 Through 1994

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Negligence Penalty - Imposition

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-1 & 2

The taxpayer protest the imposition of the ten percent (10%) negligence penalty.

STATEMENT OF FACTS

The taxpayer filed its 1993 FIT-20 (Financial Institution Tax Return) in a timely manner on September 15, 1994. The return was filed following the Indiana Tax Court decision in Fort Wayne National Corporation, on September 8, 1993. The Tax Court's decision stated that the Department's inclusion of municipal bond interest income in the calculation of the Fort Wayne National FIT return liability was improper. The taxpayer then filed its 1993 FIT return excluding its municipal bond interest income as well as amending its 1990-1992 returns. The amended returns included a statement explaining that the returns were being amended pursuant to the Fort Wayne National decision and that if the decision was reversed, the taxpayer would again file amended returns. On April 10, 1995, the Indiana Supreme Court overturned the decision of the Indian Tax Court's Fort Wayne National decision. The taxpayer in consultation with its accountants decided the most prudent time to amend the 1993 return was when the 1995 return was being prepared. Prior to the preparation of the taxpayer's 1995 FIT return, an audit notice was received, for the years 1992 through 1994. The taxpayer subsequently decided that it did not make sense to amend its returns until the completion of the audit. The Department assessed a ten percent (10%) negligence penalty for the years 1992, 1993, and 1994. The file shows that the additional tax assessed by the Department is less than one percent of the total tax liability in each year as originally reported.

Negligence Penalty – Imposition

DISCUSSION

The taxpayer protests the Department's imposition of the ten percent (10%) penalty assessment. Indiana Code section 6-8.1-10-2.1 requires a ten percent (10%) penalty to be imposed if the tax deficiency is due to the negligence of the taxpayer. Department regulation 45 IAC 15-11-2 provides guidance in determining if the taxpayer was negligent in nature.

Departmental regulation 45 IAC 15-11-1(b) defines negligence as "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer." Negligence is also to be determined on a case-by-case basis according to the facts and circumstances of each taxpayer.

Subsection (d) of IC 6-8.1-10-2.1 allows the penalty to be waived upon a showing that the failure to pay the deficiency was due to reasonable cause. Departmental regulation 45 IAC 15-11-2(c) requires that in order to establish reasonable cause, the taxpayer must show that it "exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed. . . ."

In this instance, the taxpayer has shown reasonable cause. The taxpayer has provided to the Department's satisfaction, sufficient justification for amending its FIT returns.

FINDING

The taxpayer's protest is sustained.